

File No: WH-89-CM

ATTORNEY ID 050371991

FISHMAN MCINTYRE LEVINE SAMANSKY, P.C.

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Attorneys for Defendant, Whole Foods Market Group, Inc. i/p/a Whole Foods Market

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PAULINA FLORES and PABLO FAJARDO:

her husband :

Plaintiffs :

vs. :

CIVIL ACTION NO. :

WHOLE FOODS MARKET, JOHN DOE :

1-5 (a person, persons, entity, or entities :

whose identify is presently unknown) JOHN :

DOE INCORPORATED 1-5 (fictitious :

designations) JOHN DOE BUILDING :

SERVICES COMPANY1-10 (fictitious :

designations) :

Defendants :

PETITION FOR REMOVAL

Petitioner, Whole Foods Market Group, Inc. i/p/a Whole Foods Market by its attorneys, Fishman McIntyre Levine Samansky, P.C., respectfully petitions the United States District Court for the District of New Jersey as follows:

1. Whole Foods Market Group, Inc. i/p/a Whole Foods Market first received a copy of the Complaint on or about September 22, 2021 through their registered agent.

2. This case was commenced on September 16, 2021 in the Superior Court of New Jersey, Law Division, Bergen County Suit is identified in the Superior Court as Flores, Paulina and Fajardo, Pablo v. Whole Foods Market, Docket No. L-6165-21. (See Exhibit A)

3. The filing of this Petition for Removal is timely because it is filed within thirty days of the date Whole Foods Market Group, Inc. i/p/a Whole Foods Market first received notice of the

lawsuit.

4. The plaintiff's Complaint in the Superior Court of New Jersey, Law Division, Bergen County, asserts damages of a non-specified amount. Plaintiff alleges defendant created a dangerous condition which caused plaintiff to be violently twisted, jolted, strained, and lurched about sustaining serious injuries and damages. As such, Whole Foods Market Group, Inc. i/p/a Whole Foods Market believes that the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. Whole Foods Market Group, Inc. i/p/a Whole Foods Market is informed and believes that Plaintiff, Paulina Flores, is an individual citizen of the State of New Jersey. Defendant/petitioner, Whole Foods Market Group, Inc. i/p/a Whole Foods Market is incorporated in the State of Delaware and its principal place of business is in the State of Texas. The action is therefore between citizens and a corporation of other states.

6. Accordingly, this action is removable to this Court pursuant to 28 U.S.C. § 1441.

WHEREFORE, Petitioner, Whole Foods Market Group, Inc. i/p/a Whole Foods Market, defendant in the action described herein, which is currently pending in the Superior Court of the State of New Jersey, Law Division, Bergen County, Docket No. L-6165-21, prays that this action be removed therefrom to this Court.

DATED: September 24, 2021

Whole Foods Market Group, Inc. i/p/a Whole
Foods Market

BY: 

Christopher E. McIntyre, Esq.

I certify that a true copy of the Complaint filed in the Superior Court of the State of New Jersey, County of Bergen, along with a copy of the Summons issued to this defendant, is annexed hereto as Exhibit A.

BY: 

Christopher E. McIntyre, Esq.

EXHIBIT A

Daniel G. Leone, Esq.- 161722015
BRACH EICHLER L.L.C.
101 Eisenhower Parkway
Roseland, New Jersey 07068-1067
(973) 228-5700
Attorneys for Plaintiffs,
Paulina Flores and Pablo Fajardo

PAULINA FLORES and PABLO
FAJARDO, Her Husband

Plaintiff,

vs.

WHOLE FOODS MARKET;
JOHN DOE 1-5 (a person, persons,
entity, or entities whose identify is
presently unknown); JOHN DOE
INCORPORATED 1-5 (fictitious
designations); JOHN DOE
BUILDING SERVICES
COMPANY 1-10 (fictitious
designations),

Defendants.

SUPERIOR COURT OF NEW JERSEY
DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-

Civil Action

**COMPLAINT, CERT. PURSUANT TO R. 4:5-1;
DEMAND FOR JURY TRIAL; DESIGN. OF
TRIAL COUNSEL; STATEMENT OF DAMAGES
PURSUANT TO R. 4:5-2**

Plaintiffs, Paulina Flores and Pablo Fajardo, by and through their counsel, Brach Eichler, L.L.C.,
for her Complaint against the Defendants, states as follows:

PARTIES

1. At all times material hereto, Plaintiffs, Paulina Flores and Pablo Fajardo, were residents of the State of New Jersey, residing at 68 Belmont Avenue, 2nd Floor, Garfield, Bergen County, New Jersey 07026.

2. At all times material hereto, Defendant, Whole Foods Market, was an entity conducting business in the State of New Jersey, with a principal place of business at 45 Vervalen Street, Closter, Bergen County, New Jersey 07624.

3. At all times material hereto, defendants, John Doe 1-5, were and/or are fictitiously named individuals, the identity, addresses and culpable conduct of said defendants being presently unknown. Said defendants owned, operated, maintained, and/or controlled the premises in such a negligent manner as to injure the Plaintiffs. The Plaintiffs reserve the right to amend this Complaint upon obtaining knowledge of the identity, addresses, and culpable conduct of the defendants represented herein as John Doe 1-5.

4. At all times material hereto, defendants, John Doe Incorporated 1-5, were and/or are fictitiously named partnerships, professional associations and/or professional corporations (hereinafter "partnerships") which exist under the laws of the State of New Jersey, the identity, addresses and culpable conduct of said defendants being presently unknown. Said defendants owned, operated, maintained, and/or controlled the premises in such a negligent manner as to injure the Plaintiffs. The Plaintiffs reserve the right to amend this Complaint upon obtaining knowledge of the identity, addresses, and culpable conduct of the defendants represented herein as John Doe Incorporated 1-5.

5. At all times material hereto, defendants, John Doe Building Services Company 1-10, were and/or are fictitiously named individuals, the identity, addresses and culpable conduct of said defendants being presently unknown. Said defendants owned, operated, maintained, and/or controlled the premises in such a negligent manner as to injure the Plaintiffs. The Plaintiffs reserve the right to amend this

Complaint upon obtaining knowledge of the identity, addresses, and culpable conduct of the defendants represented herein as John Doe Building Services Company 1-10.

FACTS COMMON TO ALL COUNTS

6. Plaintiffs herein incorporate paragraphs 1 through 5 as though the same were set forth herein at length.

7. On or about October 16, 2019, Plaintiff, Paulina Flores, was a licensee and/or invitee and/or was otherwise a pedestrian lawfully ambulating in the Whole Foods Market, located at or near 45 Vervalen Street, Closter, New Jersey

8. At the above time and place, Defendants, Whole Foods Market, John Doe 1- 5 (fictitiously named), John Doe Incorporated 1-5 (fictitiously named), John Doe Building Services 1-10 (fictitiously named), and/or individually and/or through certain mutual arrangements and/or agreements, as well as through the acts and/or omissions of their agents, servants, and/or employees, John Doe 1- 5 (fictitiously named), John Doe Incorporated 1-5 (fictitiously named), John Doe Building Services 1-10 (fictitiously named) were the owners and/or were in control and/or had dominion over the operation of the premises.

9. At the same time and place, the aforesaid defendants were responsible for the ownership, inspection, use, operation, supervision, managements, maintenance, repair, construction, remodeling, and/or upkeep of the premises, as well as fixtures installed thereon.

10. At the same time and place, the Plaintiff, Paulina Flores, slipped and/or tripped and/or was caused to be precipitated to the ground due to a dangerous condition allowed to exist on the premises, and sustained injuries.

FIRST COUNT - NEGLIGENCE

11. Plaintiffs herein incorporate paragraphs 1 through 10 as though the same were set forth herein at length.

12. At the above time and place, Defendants, Whole Foods Market, John Doe 1- 5 (fictitiously named), John Doe Incorporated 1-5 (fictitiously named), and John Doe Building Services 1-10 (fictitiously named), were negligent in the ownership, inspection, use, operation, supervision, management, maintenance, repair, construction, remodeling, and/or upkeep of the premises and/or the fixtures installed thereon.

13. At the same time and place, the aforesaid defendants and negligently and carelessly allowed and/or created the dangerous condition that existed exist on the premises, and/or failed to warn of same.

14. As a result of the individual, joint, and/or several tortious conduct of the various defendants as set forth above, Plaintiff, Paulina Flores, was caused to be violently twisted, jolted, strained, and lurched about thereby sustaining serious injuries and damages.

15. As a direct and proximate result of the negligence of the Defendants, Whole Foods Market, John Doe 1- 5 (fictitiously named), John Doe Incorporated 1-5 (fictitiously named), and John Doe Building Services 1-10 (fictitiously named), as aforesaid, Plaintiff, Paulina Flores, was caused to sustain and did sustain serious and permanent personal injuries requiring the care and treatment of physicians, hospitalization and medication and have been and will in the future continue to be hampered in her daily routines.

16. As a further result of the individual, joint, and/or several tortious conduct of the various defendants as set forth above and by reason of the injuries sustained, Plaintiff, Paulina Flores, has sustained an impairment of her earning capacity and power, all to her great detriment and loss.

17. As a further result of the individual, joint, and/or several tortious conduct of the various defendants as set forth above and by reason of the injuries sustained, Plaintiff, Paulina Flores, has in the

past incurred and will in the future continue to incur other financial losses or expenses, all to her great detriment and loss.

18. As a further result of the individual, joint, and/or several tortious conduct of the various defendants as set forth above and by reason of the injuries sustained, Plaintiff, Paulina Flores, has in the past and will in the future continue to suffer great pain, suffering, agony, and mental anguish, all to her great detriment and loss.

19. As a further result of the individual, joint, and/or several tortious conduct of the various defendants as set forth above and by reason of the injuries sustained, Plaintiff, Paulina Flores, has in the past and will in the future be hindered from attending to her daily duties, functions, and occupation, all to her great detriment and loss.

WHEREFORE, Plaintiffs, Paulina Flores and Pablo Fajardo, her husband, demand judgment against the Defendants, Whole Foods Market, John Doe 1- 5 (fictitiously named), John Doe Incorporated 1-5 (fictitiously named), and John Doe Building Services 1-10 (fictitiously named), jointly, severally or in the alternative, in the amount of their damages together with interest and costs of suit.

SECOND COUNT – LOSS OF CONSORTIUM

20. The Plaintiffs herein incorporate paragraphs 1 through 19 as though the same were set forth herein at length.

21. At the same time and place aforesaid, Plaintiff, Pablo Fajardo, was the spouse of Plaintiff, Paulina Flores, and, as such, was entitled to services, comfort, consortium, and society of Paulina Flores, and also was responsible for her debts.

22. As a result of the aforementioned incident, Plaintiff, Pablo Fajardo, was deprived of the services, comfort, consortium, and society of Paulina Flores and was rendered obligated with regarding to her debts.

WHEREFORE, Plaintiffs, Paulina Flores and Pablo Fajardo, her husband, demand judgment against the Defendants, Whole Foods Market, John Doe 1- 5 (fictitiously named), John Doe Incorporated 1-5 (fictitiously named), John Doe Building Services 1-10 (fictitiously named), jointly, severally or in the alternative, in the amount of their damages together with interest and costs of suit.

BRACH EICHLER, L.L.C.



BY:

DANIEL G. LEONE, ESQUIRE
Attorney for Plaintiffs

Dated: September 16, 2021

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury as to all issues.

BRACH EICHLER, L.L.C.



BY:

DANIEL G. LEONE, ESQUIRE
Attorney for Plaintiffs

Dated: September 16, 2021

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Daniel G. Leone, Esquire, is hereby designated as trial counsel on behalf of the Plaintiffs.

BRACH EICHLER, L.L.C.



BY:

DANIEL G. LEONE, ESQUIRE
Attorney for Plaintiffs

Dated: September 16, 2021

CERTIFICATION PURSUANT TO R. 4:5-1

I, Daniel G. Leone, Esquire, hereby certify that the facts contained in the within matter are not subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge or belief. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. I also certify that the facts contained in the within matter are true and correct to the best of my knowledge and belief. If any of the statements made by me are willfully false, I am subject to punishment.

BRACH EICHLER, L.L.C.



BY:

DANIEL G. LEONE, ESQUIRE
Attorney for Plaintiffs

Dated: September 16, 2021

STATEMENT OF DAMAGES CLAIMED PURSUANT TO R. 4:5-2

Plaintiffs request damages in the amount of \$1,000,000.00 One Million Dollars with regard to the above-captioned case.

BRACH EICHLER, L.L.C.



BY:

DANIEL G. LEONE, ESQUIRE
Attorney for Plaintiffs

Dated: September 16, 2021

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-006165-21

Case Caption: FLORES PAULINA VS WHOLE FOODS
MARKET

Case Initiation Date: 09/16/2021

Attorney Name: DANIEL G LEONE

Firm Name: BRACH EICHLER LLC

Address: 101 EISENHOWER PKWY
ROSELAND NJ 07068

Phone: 9732285700

Name of Party: PLAINTIFF : Flores, Paulina

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: PERSONAL INJURY

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: Paulina Flores? NO

Are sexual abuse claims alleged by: Pablo Fajardo? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

09/16/2021
Dated

/s/ DANIEL G LEONE
Signed

Daniel G. Leone, Esq. – 161722015
BRACH EICHLER LLC
101 Eisenhower Parkway
Roseland, New Jersey 070680
Attorney for Plaintiff
(973) 228-5700

PAULINA FLORES and PABLO
FAJARDO, Her Husband,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

Plaintiff,

DOCKET NO. BER-L-6165-21

vs.

WHOLE FOODS MARKET;
JOHN DOE 1-5 (a person, persons,
entity, or entities whose identify is
presently unknown); JOHN DOE
INCORPORATED 1-5 (fictitious
designations); JOHN DOE
BUILDING SERVICES
COMPANY 1-10 (fictitious
designations),

Civil Action

SUMMONS

Defendants.

From The State of New Jersey, To The Defendant(s) Named Above:

Whole Foods Market

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the clerk of the Superior Court, Hughes Justice Complex, CN 971, Trenton, New Jersey 08625. A filing fee* payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

/s/ Michelle M. Smith

Michelle M. Smith, Clerk
Superior Court of New Jersey

Dated: September 16, 2021

Name of Defendant to be Served: Whole Foods Market

Address of the Defendant: 45 Vervalen Street Closter NJ 07624

*** \$105.00 For Chancery Division Cases or \$135.00 for Law Division Cases**